

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

CHARLES MATTHEWS, Petitioner

V.

NO. 3:94CV194-B-A

MARSHALL COUNTY, MS, ET AL, Respondents

O P I N I O N

This cause comes before the court on the petition of Charles Matthews for a writ of habeas corpus pursuant to 28 U.S.C. §2254. Petitioner seeks release from state custody.

Petitioner states that he has been in the Marshall County Jail for seven months. He states that he was bound over to the grand jury but has not been indicted.

After carefully considering the contents of the pro se complaint and giving it the liberal construction required by Haines v. Kerner, 404 U.S. 519 (1972), this court has come to the following conclusion.

It is well settled that a state prisoner seeking habeas corpus relief in federal court is first required to exhaust his available state remedies. 28 U.S.C. §2254(b) and (c)¹; see also Rose v.

¹ 28 U.S.C. §2254(b) and (c) provide:

(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted

Lundy, 455 U.S. 509 (1982). More specifically, a petitioner must present his claims to the state courts in such a fashion as to afford those courts a fair opportunity to rule on the merits. Picard v. Conner, 404 U.S. 270 (1971); Dispensa v. Lynaugh, 847 F.2d 211, 217 (5th Cir. 1988). A habeas corpus petitioner must provide the state's highest court with a fair opportunity to pass upon the issues raised in the petition for federal habeas corpus relief. Dupuy v. Butler, 837 F.2d 699, 702 (5th Cir. 1988) (citing Carter v. Estelle, 677 F.2d 427, 443-44 (5th Cir. 1982)).

Petitioner's case is still in the Circuit Court of Marshall County. He has an available state remedy under the Mississippi Habeas Corpus procedure, §11-43-1, et seq., Miss. Code Ann. (1993 Supp.). If he is denied relief, he has the further right to appeal to the Mississippi Supreme Court. §11-43-53, Miss. Code Ann. (1993 Supp.)

After exhausting his available state remedies, petitioner will then be entitled to proceed in the federal district court.

unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective rendering such process ineffective to protect the rights of the prisoner.

- (c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

A final judgment in accordance with this opinion will be entered.

THIS the _____ day of _____, 1995.

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE